

Wisconsin River Rail Transit Commission

Full Commission Meeting – Friday, 8 August 2008 at 10 AM

Dane County Hwy Garage, 2302 Fish Hatchery Rd, Madison, WI

1. Chair Karl Nilson called the meeting to order at 10:04 AM and welcomed Fritz Ruf – new Waukesha County appointee to the Commission.
2. Commissioners in attendance for all or part of the meeting:

County	Commissioner	Aug '08
Crawford		
	Tom Cornford	X
	Kersten Rocksvold	X
Dane	Jim Haefs-Flemming	
	Forrest Van Schwartz	X
	Gene Gray	X
Grant	Robert Scallon	
	DuWayne Carlin	X
	Margaret Ruf	X
Iowa	Gerald Dorscheid	X
	Joe Thomas	
	Charles Anderson	X

County	Commissioner	Aug '08
Rock	Alan Sweeney	X
	Terry Thomas	X
	Katie Kuznacic	X
alternate	Ben Coopman	
Sauk	Joel Gaalswijk	X
	Larry Volz	X
	Halsey Sprecher	X
alternate	Rob Sinklair	
Walworth	Allan Polyock	X
	Jerry Grant	X
	Richard Kuhnke	X
Waukesha	Karl Nilson	X
	Richard Manke	X
	Fritz Ruf	X

Others in attendance for all or part of the meeting are listed below:

Joni Grave (SWWRPC / WRRTC Administrator); Eileen Brownlee (Kramer & Brownlee); Paul Pustina (Village of Arena); Frank Huntington and Roger Larson (WisDOT); Tim Karp and Ken Lucht (WSOR); Jim Matzinger (Dane County Hwy CPA / WRRTC Accountant); Steve Foye, Jr. (Resident – Village of Arena).

3. Motion accepting Graves' certification of Public Notice / Gray / Van Schwartz / Passed Unanimously.
4. Motion approving the revised Agenda, prepared and noticed by Graves, which included (a) possible action on a memorial contribution, and (b) added WSOR's annual Financial Presentation, which was forwarded from an earlier Full Commission meeting Agenda / Manke / F.Ruf / and also reordering the Agenda to move items 14 and 15 (Spring Grove and Arena) up, since the Commission's attorney had to leave for another appointment / Van Schwartz / Cornford / Passed Unanimously.
5. Motion approving the *draft* July Minutes prepared by Graves, with the note that in at least one instance, Commissioner Sprecher's name had been misspelled / Kuhnke / Volz / / Passed Unanimously.
6. Public Comment – NA
7. Correspondence & Communications – Graves provided a summary of correspondence and communications, including: (a) the current schedule of rail inspection trips, which WSOR is hosting for local elected officials, and noted that these are not rail transit commission trips; (b) the new Sauk County Economic Development Committee will consider WRRTC's request for 2009 rehab funds and Graves had received a letter and phone call requesting representation at the meeting but said she would be unavailable, and that Commissioner Gaalswijk had told her before the meeting that he is on the committee and would represent the request; (c) letter appointing Waukesha County Supervisor Fritz Ruf, replacing Bob Thelin; (d) and the recent obituary for Jim Gardner and recommendation by Commissioner Van Schwartz that the Commission make a memorial contribution.

Motion authorizing a \$50.00 contribution to the Memorial for Jim Gardner, father of WSOR President Bill Gardner / Van Schwartz / Anderson / Passed Unanimously.

8. Update & Possible Action on the pending agreement with the Village of Spring Grove, IL, re the WRRTC's property – Mack Sherman and Bonnie de Groot, Village of Spring Grove, IL. WRRTC's attorney, Eileen Brownlee, referenced the June action of the Full Commission and "the subsequent flurry of emails about proposed changes –

from my own side of the fence” and said she was concerned that the Commission had taken action and would be negotiating in bad faith if the pending agreement were revised and revised. Nilson asked for the Village’s input on the subsequent recommendations for the agreement. Sherman said the State of Illinois’ road requirement would be 60’ and the Village would have to grant a variance to its self to approve anything less. In discussion it was said that the railroad encourages improvements to the existing roadway that would not exceed 40’ – rather than “dramatically expanding” the road and was noted that the Village doesn’t have money for this now, so why impose these standards if they don’t have the money. Lucht said the railroad is concerned that the property be retained as a future trans-load site and wants the parcel maintained for its most productive use, so they would want the Commission to convey the minimal width. Van Schwartz compared the condition of the road to the “Ho Chi Minh Trail” and said he hadn’t realized that the Village didn’t have money to make the improvements.

Regarding the location of the road, Sherman said the road is up to the north boundary now. Van Schwartz said the fence-line is the boundary – not the road and suggested removing fence and maximizing the property for the railroad. Sherman said he had not measured it, but that he thought the difference was less than 5’ and, after further comments from Van Schwartz, he said “I guess we need to establish where the fence line is” and Van Schwartz reiterated his position that the road width be kept at 40’. Gaalswijk said it sounds like we’re talking about 5’ to 8’ and it would not be practical to move the road, which would serve large trucks, and there needs to be some buffer at the property line. Van Schwartz spoke again to his concern that the Village does not have any money for improving the road. Sherman said the Village plans ahead for improvements and, although there is no improvement for the road in this fiscal budget, it is the Village’s full intent to improve it. Van Schwartz said the draft from the Village’s attorney had no timeline for road improvements, which he wanted to see in the agreement. Polyock, who arrived during the discussion, asked about the length of the road and Sherman said, from east to west, the dead-end road is about 2700’ of gravel with a good base.

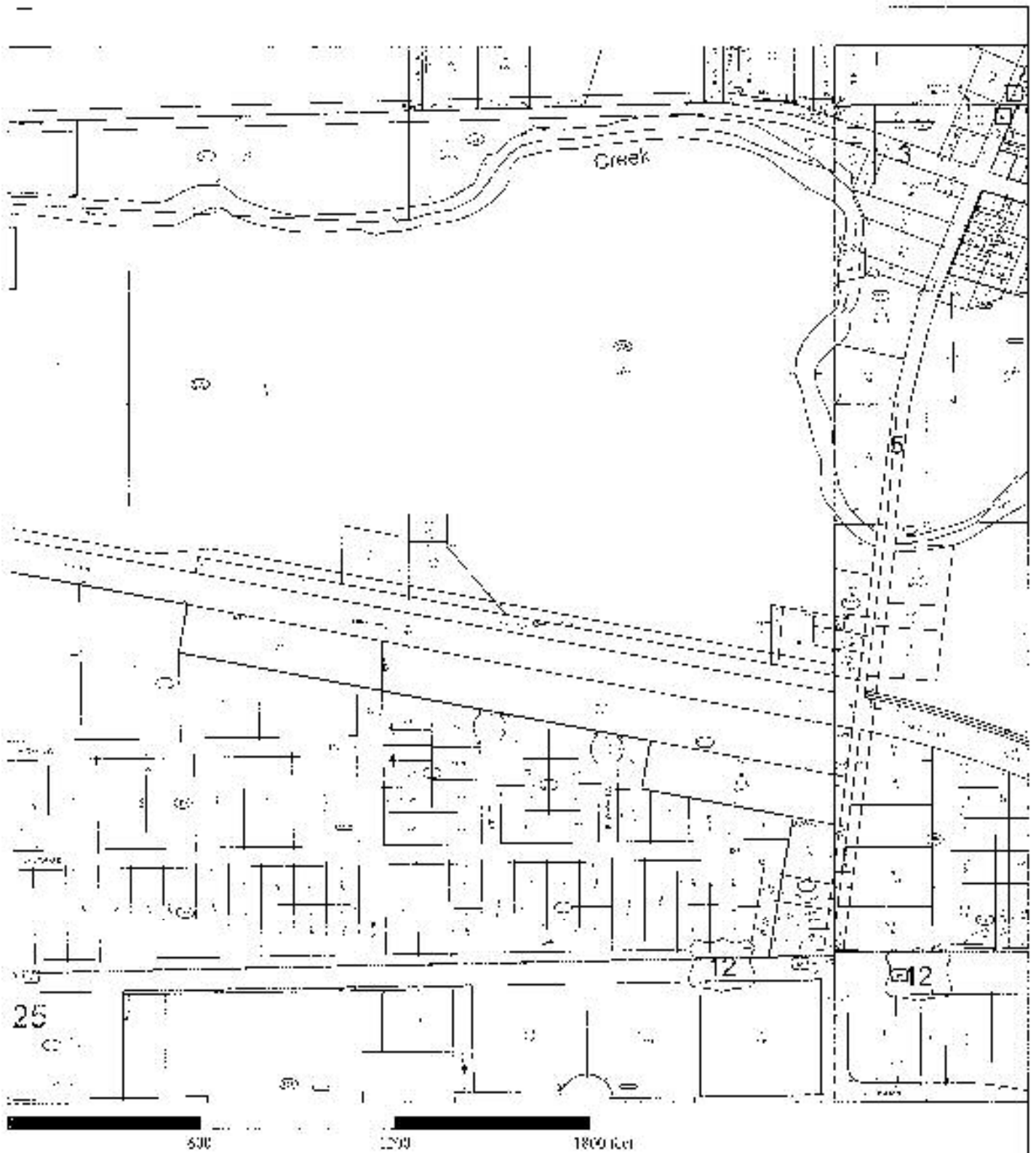
After further comments, Carlin asked if there were pictures or drawings and the Spring Grove representatives set up a laptop/projector and showed the property map (see following page). Sherman said there are conflicting reports about ownership of the strip from the county tax map and the road is in “no-man’s-land” on the tax map, but the area to the south comes up as the Commission’s property and the area to the north comes up as the Village’s property.

Nilson asked if there was agreement on the 40’ road width. F.Ruf said he was loathe to deed something that wouldn’t even meet their own standards of 60’ noting they wouldn’t approve it in Waukesha. In response to a question, Brownlee clarified that this would be a street deed, which differs from an easement, but if the road were vacated it would be reversionary so it is akin to an access agreement.

Nilson asked about other users of the road and was told that there is a recycler, a residence, and the fish hatchery property. Sherman said the latter was the very first fish hatchery in the state, and the Village acquired it a few months ago as a “passive nature park.” Manke said he agreed with F.Ruf and agreed that there were issues with blurring the negotiations. Nilson said the Commission was trying to preserve railroad access and accommodate use. Manke said he understood, but if he had the Village’s hat on, he would question the 40’ road. Sprecher asked whether there was other access. Sherman said no and that there was no access from the north with the creek. M.Ruf asked about the type of traffic that uses the road. Sherman said the waste disposal business has semis that haul dumpsters and that’s the extent of current heavy loads, the other property is a residence and the road provides access to that home, and that there will be additional traffic to the recreational park. Dorscheid asked about the width of the strip on the map (see following page) where ownership is in contention. Sherman said it is 20’ to 30’ wide. Gray asked about increased traffic and parking and Sherman said all of the parking for the fish hatchery facility will be within the park.

After further comments, Polyock said he agreed with F.Ruf and Manke and that the road would serve future railroad use too, so it should be a wider, heavier road and “40’ doesn’t cut it for a good road.” Van Schwartz said again that he thought it should be moved to the property line. Lucht said the road that is there now fits the railroad’s purposes and they do not need an improved 60’ road. Polyock asked, “What if they say you can’t use heavy traffic on this road?” Lucht said at the last meeting the Commission had reiterated its commitment to preserving existing rights to use. Sprecher said he was ok with the 40’ road and thought it would help to slow traffic.

Motion approving specifications for a 40’ road in the pending agreement with the Village of Spring Grove, IL / Sprecher / Van Schwartz / in discussion, Manke said this is 2008 and he would oppose; Volz said a Town Road can be as narrow as 22’ and that he didn’t see need for more than 40’; Van Schwartz said he would like to have only 24’ of pavement; Brownlee said to Village staff that she understands that “you would have to give yourself a variance” but noted that the Illinois road standards manual required a wider road and the agreement would have to reference



Project: for Village of Spring Grove
8/25/2008

Center of View in
Map Page: 04-25
McHenry County

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that the 40' road, as agreed upon, would not meet Illinois' standards; after further comments, there was a request for a roll call vote / **Motion Passed with 17 in favor (Anderson, Carlin, Cornford, Dorscheid, Gaalswijk, Grant, Gray, Kuhnke, Kuznacic, Nilson, Rocksvold, M.Ruf, Sprecher, Sweeney, T.Thomas, Van Schwartz, Volz) and 3 against (Manke, Polyock, F.Ruf).**

Regarding the reference to grass seed in the draft agreement, Sherman said it was made at the suggestion of a Village Trustee and was the generosity of the Village to do it, but if the Rail Commission doesn't want it done, the Village wouldn't do it. Van Schwartz said he understood that the Village wants the Commission's property to be green space in perpetuity and Sherman said no. Brownlee asked about the timing for road improvements and Sherman said he thought two years would be more than reasonable.

Van Schwartz said "I hate to be a pest, but at the July meeting we took action that the zoning remains industrial in perpetuity. Brownlee said it isn't in there because it's illegal – it's called 'contract zoning'. Van Schwartz asked what guaranty would the Commission and the railroad have that the zoning would remain the same and Brownlee said "None – but we have none now." Lucht referenced interstate commerce ... and Brownlee said that's another issue.

Nilson asked the Village representatives if they would be happy with the terms being discussed and Sherman said this has gone on for several years, is a big project, and they will be glad to see it done. Manke asked if there would be further review or if the Commission would be approving the terms right here and Gaalswijk asked if the Commission would be taking action. Brownlee recommended action by the Full Commission on the terms being discussed, noting that otherwise the terms change every month.

Motion approving the terms of the pending agreement, as discussed, with the Village of Spring Grove, IL / Gaalswijk / Manke/ in discussion, Manke asked Brownlee to summarize the terms: (a) Village staff had agreed to provide no ground cover, (b) Village staff had clarified that the Village was not expecting that the Commission's property be maintained as green-space in perpetuity, (c) there is no legal assurance related to the continued zoning of the property, (d) the revised agreement will specify the width of the road to be no greater than 40' and references to meeting Illinois' road standards would be changed accordingly, (e) Village staff considered a two-year timeframe reasonable for the Village to make improvements to the road / (f) Graves said the other issue raised at the last meeting was a requirement that the well be capped and Sherman agreed to this, which was added as a friendly amendment / (g) Sherman asked that the agreement clarify that the 40' northern boundary is the fence-line / (h) final approval that the agreement meets the terms, as agreed upon, would be made by Brownlee / **Polyock called the question / F.Ruf / Passed Unanimously / and the Motion Passed Unanimously.**

Graves asked Sherman for copy of the map displayed at the meeting (see preceding page) and Commissioners wished the Village well on its opening event at the Fish Hatchery site on September 6th.

- 9. Update & Possible Action re WRRTC property in the Village of Arena, WI, and Village's request for removal of structures** – *Representing opposing interests were Paul Pustina, Village of Arena, and Steve Foye, Jr., who has been using the sheds for storage.* Van Schwartz lead off, saying the issue had been discussed at earlier Commission meetings and that the day before he, Gray, Graves, Foye, and Pustina had met at the site. Van Schwartz said: (a) the easternmost building is in very poor shape and should come down or be used by the Arena Fire Department for practice, (b) the next building is used by the railroad, has a lot of material in it, and doesn't appear to have a lock, adding that the suggestion had been made for the railroad to construct a new metal structure and it was his thought that the railroad wouldn't want to make that expense but, if the Village wanted to construct a metal building at its expense, it would be OK, (c) Steve Foye, Sr. [Chair of the WRRTC at the time of his death] and his son, Steve Foye, Jr., had a vest-pocket agreement to store materials in the buildings and yesterday the group received letters from Foye, referencing an agreement with the railroad and the Anchor Box Company, which had gone bankrupt, for use of the buildings, (d) he thought they came to agreement at the meeting the day before to demolish the first building, using local Amish who Foye knows and, as a last resort method to destroy the building by fire, although he said he thought most Commissioners were least in favor of fire, and (e) that he and Foye had agreed that if he would commit to clean up the middle and end buildings and paint them back to Milwaukee Road two-color, he would recommend that the Commission enter into an agreement for \$1/year with Foye to use the shed building, and Van Schwartz concluded that we recommend this.

Foye expressed his interest in this outcome. Graves said she wanted to clarify that she had attended the meeting to see the buildings, but was not a party to negotiate any resolution, noting that's the role of the Commission as a whole. Huntington said he thought the three-party agreement between the Commission, WSOR, and WisDOT bars the Commission from leasing property for uses other than railroad purposes. Brownlee said the letter from the Anchor

Box Company, which she had first seen just before the meeting, referenced an agreement and lease number. She said it would be important to see if those documents could be found, but agreed with Huntington that the Commission probably could not enter into a personal property agreement when the underlying fee is owned by WisDOT. Huntington said his WisDOT colleague Vicki Schaefer started in her current job in 1984, and Brownlee said so had she, and that WisDOT staff would look further for any agreements. Gray said the look of the property is poor. Nilson asked Brownlee for her comments and she asked that they hear from the Village first.

Pustina expressed appreciation for the [WisDOT] permit to put a water main under the railroad track. Regarding the possibility that the Fire Department could demolish the structures, he said they had checked into that, but the DNR had raised concerns about the possible presence of asbestos, so they had decided to back away from that idea. He said he agreed with the consensus that the one building come down, questioned whether the railroad was using the other structure regularly, and said the Village would like to see all of the structures removed. Pustina was asked whether he thought the buildings were up to the Village's building code. In response, he said the doors are rotted, roof lines sag, and the Village is concerned that they are a magnet for kids. Van Schwartz asked Brownlee where the Commission stands vis-a-vis local codes and ordinances and she said the structures would likely be legal non-conforming, but nuisances aren't grandfathered if they violate code.

After further discussion, Lucht said he had just called the track inspector and, although some railroad materials may remain there, WSOR does not rely on the buildings, does not need the buildings, and has no interest in the buildings.

Motion authorizing the Commission to take possession of all of the buildings and demolish, burn, or otherwise remove them / Gaalswijk / Foye objected, as a neighbor, to burning / M.Ruf said she favored reuse of the materials / Van Schwartz said the Amish would have interest in the materials / Gaalswijk said he was not necessarily advocating burning, but was supporting disposal and agreed the wood may have value / Foye said he had talked with the Amish and they were interested in the lumber / Gaalswijk asked to change the Motion to demolish and remove the structure with a goal of six months for removal of materials, but asked who would pay for any related expenses / Van Schwartz suggested the Commission require the Amish to clean up the site / in further discussion, Pustina said generally people who remove a structure are responsible for site clean-up / Gray noted it would be necessary to have insurance and documentation to hold harmless / Brownlee said she would put together an agreement if a party or parties could be found who would demolish the buildings, but that there would also be some requirements related to the abatement of asbestos, etc. / **the Motion was summarized to: (a) ask Foye and WSOR to remove everything stored in the buildings within six months, (b) explore options for recycling the building materials, with the Iowa County members Anderson and Dorscheid overseeing this, within a six-month timeframe, and (c) determine whether the Amish may be interested in the materials, with a committee of Pustina, Dorscheid, Anderson, and a WSOR representative participating / Gray / Passed Unanimously.**

Brownlee departed and the Commission returned from a 10 minute break at 11:44 am

REPORTS & COMMISSION BUSINESS

- 10. Wisconsin & Southern Railroad's Report on Operations** – Lucht said he would be brief, since Tim Karp would be making WSOR's financial presentation, and noted that since it would be in open session WSOR staff may not be able to answer some questions. He said general operations over the last month were almost back to normal and they are working with FEMA to see if there may be any assistance, but they know that there will be none for Reedsburg, which is privately owned. They are doing maintenance crossing upgrades on the Madison Sub and on bridges in Janesville. He said they had to lay off some maintenance-of-way people because of lack of ties, financial shortfalls, and the limited availability of ties nationally, but are now calling people back to work. He said several Commissioners were on the spring rail inspection trip and offered to arrange for people to see the installation of the new CWR (continuously welded rail) if they were interested. He said new hires were learning the trade (conductors, trainmen, engineers) and receiving training on security. Regarding economic development potential, he said they are exploring a potential project in Crawford County with the BNSF. WSOR is also working to try to provide service on trackage rights to the Waukesha Industrial Park, seeking a site for a lumber company in the area, has a new customer in Watertown that makes sugar coatings for candies, and Seneca in Baraboo has ordered some cars.
- 11. RR15 Update and Request for WRRTC's Support** – Lucht said he hoped the Commission would reiterate its support for Rail Restoration 15 (RR15) and recapped that about two years earlier WSOR had received inquiries from prospective customers in southwestern Wisconsin, and on the Sheboygan Falls Line when it was embargoed by the Union Pacific. He said the Pecatonica Rail Transit Commission [Rock and Iowa Counties are also members of the PRTC] had received support from its member counties, as well as villages, cities, and towns in its region, and had reiterated its support for this priority project for the 2009-11 state budget. He asked that the WRRTC take action and

provide a letter of support, noting that this would not imply any fiscal commitment by the Commission or its counties, but would indicate support for the concept.

Motion authorizing that a letter supporting the RR15 initiative be sent to Secretary Busalacchi, Governor Doyle, Joint Finance Committee members, and the WRRTC Legislative Delegation / Sweeney/ Van Schwartz / Passed Unanimously.

- 12. WRRTC Financial Report** (July & August) – Jim Matzinger, Dane County CPA / WRRTC Accountant, presented the Treasurer’s Report & Payment of Bills and quipped “this is a big day because you get to listen to two accountants.” In response to Matzinger’s reference to the Illinois tax payment, which is reimbursed by WSOR, Karp said they also get some Illinois tax bills directly and Matzinger suggested they should all go to the WRRTC. Van Schwartz said the WRRTC had raised a sufficient ruckus in Spring Grove that there are no tax bills currently for the property there.

Motion authorizing payment of the Commission’s bills, as presented / Anderson / Sweeney / Passed Unanimously.

Motion accepting the Treasurer’s Report, as presented / Van Schwartz / Cornford / Passed Unanimously.

- 13. WRRTC Administrator’s Report** – Joni Graves, SWWRPC Trans. Planner / WRRTC Administrator, (a) asked whether the Executive Committee would consider rescheduling its September 5th meeting for September 12th and, in response to consensus approval, said she would send a notice that the date had been changed; (b) provided an update on the status of the Prairie du Chien Sub appropriations request from Molly Harris, Office of Senator Kohl, who had written on August 1st that: “The Senate appropriations committee has marked up the bill, and did not include funding for the Commission’s request. We’ve been told that it was just a very tough year for earmarks, and very few projects received funding. At this point, we’re not sure about the outlook for the bill – we’ll obviously have a very busy schedule in September”; (c) said following the July meeting, she had emailed County Clerks with the Commission’s 2009 request for rehab funding for \$26,520/County and the PRTC had requested that Green County contribute \$25,500; (d) and circulated copies of the July 2008 www.wrrtc.org usage report.
- 14. WisDOT** – No report was provided and Huntington said he had no comments.
- 15. Motion concurring with the WRRTC Executive Committee’s actions at it July 2008 meeting / Manke / Kuznacic / as amended to reflect today’s actions / Passed Unanimously.**
- 16. Presentation, per the Operator’s Agreement** “Section 9.1 – Reports (a) Operator shall submit the following information to Commission and WisDOT within 45 days after the end of each quarter year beginning with the quarter ending December 31, 1994 for its operations. (i) An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance; (ii) A summary of originating and terminating traffic by commodity, by principal line segment, and by month; (iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by principal line segment; and (iv) A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including but not limited to rail car storage fees, building rent, excursion trains, car repair revenues, and the like. The report shall describe the amounts received, the duration of the period for which the income is received and the payer. Per the Operator’s Agreement, additional reports are also made to WisDOT” **by Tim Karp, WSOR CEO, on WSOR’s shipping and financials.** He lead off, noting that, “Over the years, I’ve always heard that Bill only comes asking for money ... and I’m glad to say that with the federal tax credit, we were able to make greater investments...” Gray left at 12:18 pm; M.Ruf at 12:56 pm; Anderson at 12:58 pm, and Van Schwartz at 1:00 pm. Karp finished at 1:05 pm and Nilson thanked him, on behalf of the Commission, for making the presentation.
- 17. The meeting adjourned by consensus at 1:06 pm.**